

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAR. TOD SPIEKER,  
Plaintiff,

v.

TANYZIA WYLIE, et al.,  
Defendants.Case No. [15-cv-04501-NC](#)**ORDER TO SHOW CAUSE**

Re: Dkt. No. 1

Defendant Wylie filed a notice of removal alleging that this Court has federal question jurisdiction under 28 U.S.C. § 1331. In the underlying complaint, R. Tod Spieker brought a limited action for unlawful detainer, which arises exclusively out of state law. Accordingly, Wylie must show cause in writing why removal is proper by October 15, 2015. Also by October 15, 2015, the parties must consent or decline to the jurisdiction of a United State Magistrate Judge, by submitting the form attached.

Federal courts are courts of limited jurisdiction and are presumptively without jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Removal of a state court action to federal court is appropriate only if the federal court would have had original subject matter jurisdiction over the suit. *See* 28 U.S.C. § 1441(a). Federal courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331, and over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is

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1 between citizens of different states.” 28 U.S.C. § 1332(a).

2 In the absence of diversity jurisdiction, removal to federal court is only proper when  
3 “a federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
4 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). “Federal jurisdiction cannot be  
5 predicated on an actual or anticipated defense . . . [n]or can federal jurisdiction rest upon  
6 an actual or anticipated counterclaim.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).  
7 A federal court may dismiss an action on its own motion if it finds that it lacks subject  
8 matter jurisdiction over the action. *Fielder v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983);  
9 *see also* Fed. R. Civ. P. 12(h)(3).

10 Here, Wylie alleges in her notice of removal that the Superior Court for the County  
11 of Santa Clara did not sustain her Demurrer based on a defective notice. This is  
12 insufficient as a basis for removal because federal question jurisdiction cannot be based on  
13 a defense. If Wylie does not demonstrate federal subject matter jurisdiction, this case will  
14 be remanded back to Santa Clara County Superior Court.

15 For additional guidance, the Court has attached a letter to direct Wylie to the  
16 Court’s online resources for persons representing themselves.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: October 1, 2015

21   
22 NATHANAEL M. COUSINS  
23 United States Magistrate Judge  
24  
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26  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

R. TOD SPIEKER, doing business

as THE PINES,

Plaintiff(s)

v.

TANYZIA WYLIE, aka TANYZIA L. WYLIE,

CHARLES JEFFERS, DOES I through V, inclusive

Defendant(s).

Case No. 15-cv-04501-NC

CONSENT OR DECLINATION  
TO MAGISTRATE JUDGE  
JURISDICTION

**INSTRUCTIONS:** Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

☐ **Consent to Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

**OR**

☐ **Decline Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: \_\_\_\_\_, 20\_\_

NAME: \_\_\_\_\_

COUNSEL FOR

(OR "PRO SE"):

*Signature*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

280 South 1st Street  
San Jose, CA 95113

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

SUSAN Y. SOONG  
CLERK OF COURT

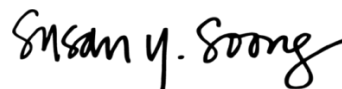
GENERAL COURT NUMBER  
408-535-5363

To: Pro Se Litigant  
Re: Representing Yourself Before This Court

Dear Pro Se Litigant:

If you are representing yourself in federal court without representation by an attorney, that is called proceeding “pro se.” The court has free resources to help you find your way through the court system and procedures. The Federal Pro Se Program at the San Jose Courthouse provides free information and limited-scope legal advice to pro se litigants in federal civil cases. The Federal Pro Se Program is available by appointment and on a drop-in basis. The Federal Pro Se Program is available at Room 2070 in the San Jose United States Courthouse (Monday to Thursday 1:00 – 4:00 pm, on Friday by appointment only), and The Law Foundation of Silicon Valley, 152 N. 3rd Street, 3rd Floor, San Jose, CA (Monday to Thursday 9:00 am – 12:00 pm, on Friday by appointment only), or by calling (408) 297-1480.

There are also online resources available on the court’s webpage. The Pro Se Handbook, found at <http://www.cand.uscourts.gov/prosehandbook>, has a downloadable version of the court’s own publication: *Representing Yourself in Federal Court: A Handbook for Pro Se Litigants*. Pay special attention to the **Civil Litigation Packets** tab on the left, which provides useful fillable forms. The Pro Se Handbook website also has a link to the Court’s Electronic Case Filing (ECF) website.



Susan Y. Soong  
Clerk, United States District Court